OCCUPATIONAL TRAINING CENTER OF BURLINGTON COUNTY, INC.
JOSEPH S. BENDER
Executive Director

December 20,2004

Committee for Purchase From People Who Are Blind or Severely Disabled
Attn: G. John Heyer
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259

Docket number (2004-01-01)

Dear Mr. Heyer,

I am writing in regard to proposed rule making on governance standards for agencies participating in the JWOD program.

The Javits-Wagner-O'Day (JWOD) act is responsible for giving birth to the most successful jobs program ever established for individuals with disabilities. We are proud and privileged to be a part of the JWOD service system.

First, let me applaud your intent to address the program's apparent abuse by a small number of JWOD producing agencies. If true, recent news reports regarding compensation levels for the upper level administrative staff of a local JWOD provider are indeed shocking. I want to caution, however, that to the best of my knowledge, such extremes in compensation are just that- extreme and rare. Although there may be others, I doubt you will find more than a few of the 560 JWOD producers providing administrative compensation approaching levels recently reported at that one agency. Moreover, you will not find many governing Boards that allow large contracts to be made between the non-profit agency and members of the Board of Trustees. While such apparent abuses must be addressed, a response to this issue must be measured and not overly burdensome for the hundreds of JWOD agencies that pay reasonable compensation.

A related question arises as to new regulations for all non-profits currently being considered by Congress. Should it be the Committee or the Congress that controls issues of governance and excess compensation in non-profit operations? At the very least, it would seem prudent to await Congressional action on this matter before promulgating regulations that could be duplicative or conflicting.

130 Hancock Lane, Mt. Holly, New Jersey 08060 (609) 267-6677

If it is decided it should be the Committee that regulates these matters, then please consider the following comments.

Most of the proposed governance standards appear to conform to those anticipated from Congress and are simply good practice. I won't comment on each.

Board term limits should not be required. This proposed section raises many issues well known to those of us in the field. The proposed regulation requiring Board turnover is one that was once written into the standards of CARF, the accrediting body for most JWOD producers. It is a regulation that has been abandoned. We have always argued that the knowledge and loyalty of long tenured Board members is a far more important asset than the value of "new blood". Both are needed, but at a ratio that is maintained according to the needs of the local non-profit Board.

It is extremely difficult to recruit good Board members. It is especially unreasonable to believe that non-profits will easily replace them in a revolving door environment. From a practical perspective, it would be almost impossible to retain a financial expert on the Board, especially a volunteer, if he/she was replaced every few years. Further, no volunteer, no matter how competent, can effectively understand the operations of a medium or large sized non-profit after only a short tenure. Lacking a historical base, a Board comprised mainly of neophytes will tend to make rash, uninformed decisions rather than slow course corrections. Moreover, Board volunteers will have little loyalty if they are scheduled for replacement after only a few years of membership.

I assume your goal is to replace Board members on a regular basis in an attempt to minimize self-dealing, however, that protection could be accomplished in other ways. A limit on the size of any contracts being awarded to Board members would be one way to control the perceived problem. An outright ban would be another, more easily monitored, means of control. I do agree that large contracts given to Board members, even with open bidding, will create in the subject Board member a strong, and possibly unjustified, loyalty to the CEO. When becoming a vendor, the Board member moves from a voluntary advisory position, independent of the CEO, to a subcontractor with allegiance, not to the agency, but to the CEO who signs his contract and check.

The proposal to make Board minutes public should not be placed into regulation. Many times personnel issues are discussed at Board meetings. A mandate to publicly disclose these discussions would result in expensive litigation. While a company can control the distribution of some personnel matters by processing them through the Personnel Committee, a final decision on most matters is made at the full Board level. Of more concern is the public release of important business information. JWOD contractors are private businesses. Many contracts at JWOD producers are not secured in the same controlled environment as are JWOD set-asides. Our corporate operations would be severely compromised in a world where competitors had open access to our strategic business information. It should be sufficient that these documents are open to the Committee and any other regulatory body that audits non-profit programs.

Regarding the determination of executive compensation, your proposed points for determining fair wages are well advised, except where compensation is directly tied to a rate earned by a Federal government employee. There are too many differences between the responsibilities of a corporate CEO and a high-ranking government employee to allow for reasonable comparison. In establishing executive compensation, the agency Board should have little difficulty if they follow most of your proposed guidelines. Comparative rates of compensation can be found in regional surveys done annually by Steven Langer of Abbott, Langer & Associates, Inc. For example, in the 2004 edition of Langer's "Compensation in Nonprofit Organizations in New York and New Jersey" we find the mean salary for a CEO of an agency with a budget between 10 million and 24 million dollars is $178,658-not including fringe. Adjustments to the mean could be made based on tenure, advanced degrees, size of corporation, etc.

Peer review, under the supervision of the two central non-profit agencies, would be a workable alternative to direct Committee oversight. The best to judge abuse are the agencies that are most familiar with the operations of non-profit vocational programs.

Most JWOD producers are accredited by CARF, the Rehabilitation Accreditation Commission, whose extensive agency audits encompass the issue of governance. To avoid the establishment of duplicative systems, the Committee could mandate CARF certification for JWOD producers. Through discussions with CARF, the governance section of the CARF program audit could be sufficiently strengthened to satisfy the Committee's needs.

Quite simply, regulations can be fashioned to address the handful of people abusing the JWOD program without imposing a potentially inefficient, duplicative system of invasive controls on everyone.

I hope these remarks are helpful and wish the Committee continued success in administering this truly remarkable program.

Sincerely,

Joseph S. Bender
Executive Director/CEO

JSB/js
CC: Jeffrey Haines, Assistant Director
Sherrell Fitts, President, Occupational Training Center Board of Trustees